

AO 241 (Rev. 09/17)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District:
Name (under which you were convicted): <u>SHEAN ELKINS</u>		Docket or Case No.: <u>2020 CV 2934</u>
Place of Confinement: <u>CHILICOTHE CORRECTIONAL INST.</u> <u>P.O. BOX 5500 CHILICOTHE OHIO 45601</u>		Prisoner No.: <u>6787</u>
Petitioner (include the name under which you were convicted) <u>SHEAN ELKINS</u>		Respondent (authorized person having custody of petitioner) <u>WARDEN, CHILICOTHE</u> <u>CORRECTIONAL INST.</u>
The Attorney General of the State of: <u>OHIO</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

FRANKLIN COUNTY COURT OF COMMON PLEAS
345 S. HIGH ST COLUMBUS OHIO 43215

- (b) Criminal docket or case number (if you know):

12CR3378

2. (a) Date of the judgment of conviction (if you know):

3-22-13

- (b) Date of sentencing:

SDA

3. Length of sentence:

22 YEARS

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case: RAPE 2907.02

6. (a) What was your plea? (Check one)

☐ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☒ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

COUNT 1, 2, 3, 21 ALL OTHERS
NO ONE PROSECUTED

ILSON

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: TENTH DISTRICT COURT OF APPEALS

(b) Docket or case number (if you know): 13AP-325

(c) Result: DENIED

(d) Date of result (if you know): 2-6-14

(e) Citation to the case (if you know): 13AP-325

(f) Grounds raised: SEXUAL PREDATOR STATUS

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

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(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: TELETH DISTRICT COURT OF APPEALS(2) Docket or case number (if you know): 19AP-231(3) Date of filing (if you know): 4-9-19(4) Nature of the proceeding: DELAYED DIRECT APPEAL(5) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL,BRADY VIOLATION

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result: _____

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(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: ☒ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: VIOLATION OF BRADY V MARYLAND

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MERIT BRIEF ATTACHED

(b) If you did not exhaust your state remedies on Ground One, explain why:

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO:

VIOLATION OF STRICKLAND V WASHINGTON

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MERIT BRIEF ATTACHED

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : _____

GROUND THREE:

VIOLATION OF HILL V LOCKHART

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MERT BRIEF ATTACHED

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:
- _____
- _____
- _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: N/A

(b) At arraignment and plea: N/A

(c) At trial: MICHELLE KAZAR 373 S. HIGH ST. COLUMBUS OHIO 43215

(d) At sentencing: SAA

(e) On appeal: TIMOTHY E. PIERCE 250 E. LONG ST. COLUMBUS OHIO 43215

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

REMAND FOR MOTION TO
DISCHARGE HEARING

or any other relief to which petitioner may be entitled.

Simon Gilbis

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 4-1-2020 (month, date, year).

Executed (signed) on 4-1-2020 (date).

Simon Gilbis

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

JAILHOUSE LAWYER - PRISON LOCKED DOWN DUE TO
COVID-19

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Shean Elkins,

Petitioner,

- VS -

Warden, Chillicothe
Correctional Institution,
Respondent.

MERIT BRIEF OF SHEAN ELKINS

Now comes petitioner Shean Elkins including a merit brief
with his initial Habeas Corpus filing.

PROCEDURAL HISTORY

According to discovery documents (not on the record), the Franklin County Children's Services Department (Hereafter "FOCS") referred a child abuse case to a Det. Tucker #2056 in 2004, and the claim was "unsubstantiated", see Doc.# A028, (not part of the record), attached herein.

Pursuant to Blendon Township Police Department (Hereafter "BTPD") Document # A026, (not part of the record), attached herein, Yvette Elkins made claims of sexual abuse against her two (2) daughters on February 25, 2012. Officer Nance (Hereinafter "Nance") gave Yvette blank witness forms for her daughters to fill out.

On February 27, 2012 Yvette returned the statements to Nance and filed a statement herself.

On February 29, 2012 Nance informed Yvette that he had no jurisdiction and that he would forward the information to Columbus Police (hereinafter "CPD").

Petitioner has never seen these statements.

On March 30, 2012 CPS filled out a Criminal Investigative Summary, See Doc.# A010, 3 pages, (not part of the record), attached herein. This summary establishes Det. Haynes as primary investigator. This summary establishes Det. Kirby downloaded text messages from Yvette's phone. Petitioner has never seen these text messages.

This summary establishes Det. Sprague assisted in a "controlled call". Petitioner has not heard this call.

On May 2, 2012 two (2) complaint/arrest warrants were issued for Petitioner, See Doc. # A018, A019, Municipal Court Record, attached herein, for one (1) count of Rape and one (1) count of Sexual Battery.

Petitioner was living in Florida, so extradition papers were issued. Petitioner returned to Ohio on June 2, 2012 See Doc. # A021, Municipal Court Record, attached herein.

Petitioner was indicted on July 6, 2012 on twenty-three (23) counts, See Doc. # A001 CPC Record 58032-K16 through K26.

Petitioner was appointed Michelle Kazar (Hereinafter "Kazar") from the Franklin County Public Defender's Office, 373 S. High St. Columbus, Ohio 43215.

Kazar filed "Demand for Discovery" on July 16, 2012, See Doc. # D014, CPC Record 58045-D87 through D91, attached herein. Request #5, Page 3 of Demand requested "evidence favorable to Defendant, #7 requested witness statements.

On July 19, 2012 the Prosecutor (Hereinafter "The State") provided "identification of discovery provided". The two (2) main items were "recorded statements of defendant" and "written or recorded statements by witnesses in the State's case in chief". Petitioner never received any of the items on the State's list.

On September 5, 2012 the State filed supplemental discovery, See Doc. # D020 CPC Record 58075-T75 & T76 where the additions of "(1) CD copy of controlled call" and "(2) CD copy of text messages", Petitioner never received any of this evidence.

On September 11, 2012 the State filed an additional supplemental discovery, See Doc. # D026 CPC Record 58080-P25 & P26 attached herein, where the addition of "(1) DVD copy of interview of defendant" was provided. Petitioner never received this evidence.

On September 25, 2012 both parties agreed to an extension of time, See Doc. # D028/029 CPC Record 58084-K20 attached herein, from September 25, 2012 to November 27, 2012.

On December 4, 2012, both parties agreed to another extension of time, See Doc. # D039/040 CPC Record 58122-S47, attached herein, from November 7, 2012 to January 29, 2013.

On January 31, 2013 both parties agreed to a final extension of time, See Doc. # D048/049 CPC Record 58152-S19 attached herein, from January 29, 2013 to March 13, 2013.

On March 20, 2013 a Plea Agreement was reached, based on Kazar's advice, See Doc. # D057 CPC Record 58189-M52 through M54, attached herein.

Petitioner was sentenced and he appealed through court appointed counsel advancing only one assignment of error:

"The lower Court's determination that Appellant meets the criteria for sexual predator status is not supported by the weight of the evidence".

See Doc. # D077 COA OA126-R71 through R78 Case No. 13AP-325. On February 6, 2014 this Court affirmed the sentence.

No appeal followed.

In 2018, Petitioner had requested documents from Municipal Court, Court of Common Pleas, Court of Appeals, as well as discovery from Kazar. After reviewing Petitioner's legal standing and the appropriate case law, Petitioner raises three (3) assignments of error.

ASSIGNMENT OF ERROR I:

The State of Ohio is in violation of United States Supreme Court ruling of Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1194, by withholding evidence favorable to Petitioner.

ASSIGNMENT OF ERROR II:

Defense Counsel was in violation of the United States Supreme Court ruling of Strickland v. Washington 466 U.S. 668, 104 S.Ct. 2052, where counsel failed to file a motion for discharge.

ASSIGNMENT OF ERROR III:

Defense Counsel was in violation of the United States Supreme Court ruling of Hill v. Lockhart 474 U.S. 52, 106 S.Ct. 366 where counsel advised Petitioner to plead guilty.

MEMORANDUM IN SUPPORT

ASSIGNMENT OF ERROR I

The State of Ohio is in violation of United States Supreme Court ruling of Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1194, by withholding evidence favorable to Petitioner.

Through the State's discovery disclosure and two (2) supplemental discovery filings, Petitioner can ascertain that the State had the following evidence:

- 1) Witness statements
- 2) Statement of Defendant
- 3) Text messages
- 4) Controlled call

See Doc. # d016, D020, D026 attached herein. Petitioner, in his discovery from Kazar did not receive any of these items, see affidavit of Shean M. Elkins attached herein.

Petitioner's demand for discovery included each of these types of evidence, See Doc. # D014. The witness statements fall under Crim. R. 16(B)(2), the statement of Defendant falls under Crim.R. 16(B)(1), as well as 16(B)(5) as evidence favorable to Defendant. The text messages and controlled call both fall under "tangible objects" under Crim.R. 16(B)(3).

Although the State made the comment:

""Counsel Only" material has been designated on this case".

There is no record within the Clerk's possession that will show "what" was designated "Counsel Only", therefore, everything listed in all three State filed documents is discoverable.

The only conclusion Petitioner can draw, without viewing the withheld evidence, is that the evidence is exculpatory to Petitioner. To establish this pattern, Petitioner knows for certain that the "DVD of Defendant's interview" has nothing inculpatory, because after Miranda was read, he requested a lawyer be present and

the interview ended. So why counsel only?

In 2012 the Ohio General Assembly overwrote Criminal Rule 16(C) in order to create the "Counsel Only" rule:

"The Prosecuting Attorney may designate any material subject to disclosure under this rule as "Counsel Only" by stamping a prominent notice on each page or thing so designated. "Counsel Only" material also includes materials ordered disclosed under division (F) of this rule. Except as otherwise provided, "Counsel Only" material may not be shown to the defendant or any other person, but may be disclosed only to defense counsel or agents or employees of defense counsel, and may not otherwise be reproduced, copied, or disseminated in any way. Defense counsel may orally communicate the content of the "Counsel Only" material to Defendant".
(Emphasis by Petitioner)

Case law is very limited on "Counsel Only" material, but in reading the plain language of the statute, only the defense counsel is allowed to view the "Counsel Only" evidence. This would preclude the trial judge, appeals judges, and most importantly, the jury from reviewing "Counsel Only" material.

So why would the State prevent the trial jury from reviewing evidence that is allegedly inculpatory to a defendant? Because the evidence is not inculpatory, but exculpatory. If you have no critical evidence that a jury can use to convict, hide it behind "Counsel Only" and now the defendant is prevented from defending himself and from requesting an acquittal. This violates due process as well as Brady v. Maryland, Supra.

If the "purpose, scope, and reciprocity" under Crim.R. 16(D) is to be obeyed, then the designation of the State's evidence in chief fails the requirement totally:

"(A) This rule is to provide all parties in a criminal case with the information necessary for a full and fair adjudication of the facts, to protect the integrity of the justice system, and the rights of defendants..."
(Emphasis added by Petitioner)

The facts stated herein violate Brady, Supra. because "Counsel Only" designations withhold evidence necessary for a full defense.

"The court held that suppression of evidence favorable to an accused upon request violated the Due Process Clause of the U.S. Constitution's 14th Amendment, where the evidence was material to guilt or punishment, regardless of the State's good or bad faith".

There is absolutely no criteria in which to control the abuse of "Counsel Only", unlike "non-disclosure" under Crim.R. 16(D), which requires a court to order non-disclosure. With the designation of all evidence favorable to Petitioner, the State violated Brady, Supra. and Petitioner's conviction must be overturned and the evidence disclosed to Petitioner so he may receive a fair trial, or to permit him the ability to plead acquittal.

ASSIGNMENT OF ERROR II

Defense Counsel was in violation of the United States Supreme Court ruling of Strickland v. Washington 466 U.S. 668, 104 S.Ct. 2052 when Counsel failed to file a motion for discharge.

In this assignment of error, Petitioner will establish that his speedy trial rights were violated, and that Kazar failed to preserve this right by failing to file a motion for discharge.

"An Appellant's failure to file a motion to dismiss on speedy trial grounds prior to trial and pursuant to R.C. 2945.73(B) prevents him from raising the issue on appeal".

State v. Taylor 98 Ohio St. 3d 27, 2002-Ohio-7017, 781 N.E. 2d 72 @37

State v. Thompson 97 Ohio App 3d 183, 446 N.E. 2d 499

"The plain language of the statute states that the proper method of raising this issue is 'upon motion made at or prior to the commencement of trial', R.C. 2945.73(B). It is this motion that triggers the prosecutor's duty to produce evidence, which negates the defendant's assertion that his trial has been too long delayed". Thompson, Supra. at **502

On normal occasions, this failure would prevent review of a failure to discharge due to speedy trial violations. However, a line of case law provides that failure to file a motion to discharge can provide the "Deficient Performance" prong of Strickland, Supra.

"[*P15] When a claim of ineffective assistance of counsel is based on counsel's failure to file a particular motion, the appellant must show that the motion had a reasonable probability of success".

"[*P17] This court, however, has recognized that allowing a defendant to enter a guilty plea after speedy trial time had expired would amount to ineffective assistance of counsel, and thus, could affect the knowing and voluntary nature of the plea".

State v. Matland 2010-Ohio-6585, citing:
State v. Haverly 2010-Ohio-1005 @ P10

"Where the trial attorney permitted the defendant to execute a waiver of his speedy trial rights and later admitted that she was unaware that the time limit had run, counsel's failure to move for dismissal strays outside the range of reasonable assistance".

State v. Gray 2007-Ohio-4549 @ P21

In order to comply with Strickland, Supra. Petitioner must meet both the

"Deficient Performance" prong and the "Prejudice" prong, as well as "Meritorious Claim" under Matland, Supra. Therefore, Petitioner will do the time frame as if the trial court would do upon a motion to discharge.

TIME FRAME

Two complaints were filed on May 2, 2012 See Doc. # A018, A019 Municipal Record attached herein. The complaints establish Petitioner was living in Florida at the time.

Petitioner was extradited to Ohio and returned on June 2, 2012. See Booking Sheet, Doc. # A021 Municipal Record, attached herein. All calculations start from June 2, 2012.

Petitioner's arraignment was June 24, 2012 and bail was set, but Petitioner could not afford it, therefore R.C. 2945.71(E) applies.

Petitioner was indicted on July 6, 2012. This is a delay of thirty-four (34) days from the date of booking, See Doc. # D001 CPC Record 58032-K16 through K26. Neither the Municipal nor Common Pleas Court establishes any documentation as to a reason for delaying the indictment beyond the ten (10) day requirement.

On July 16, 2012 Defense Counsel filed for discovery. See Doc. # D014 CPC Record 58045-087 through D91. This is ten (10) days after indictment, therefore ~~forty-four~~ (44) days have elapsed.

On July 19, 2012, the State filed its answer. See Doc. # D016 CPC Record 58047-D98/D99, attached herein. This three (3) day difference is applied to the State. Petitioner continues to rest at forty-four (44) days.

The docket indicates that the next tolling event was filed on September 25, 2012. See Doc. # D028/D029 CPC Record 58084-K20/K21. This tolling event comes twenty-one (21) days after the speedy trial clock expired.

With all of the exemptions, Petitioner's speedy trial right was over on September 4, 2012. The extension of time of September 25, 2012 is twenty-one (21) days after expiration, and yet the State and Kazar continued with the case for an

additional one hundred-ninety-seven (197) days beyond September 4, 2012. Although extension waivers were filed, Petitioner's argument ends at September 4, 2012.

Pursuant to Matland, Supra. a motion to discharge would have been meritorious, and Counsel Kazar did not have a clue, or she would not have allowed three (3) extensions of time.

Counsel Kazar was deficient pursuant to Strickland, and Petitioner is serving a twenty-two (22) year sentence based upon Kazar's ineffective advice.

Petitioner's conviction must be vacated so that the State may introduce evidence to negate the claim of speedy trial violation.

ASSIGNMENT OF ERROR III

Defense counsel was in violation of the United States Supreme Court ruling of Hill v. Lockhart 474 U.S. 52, 106 S.Ct. 366 when Counsel advised Petitioner to plead guilty.

When the United States Supreme Court rendered its decision in Strickland v. Washington, Supra., it applied solely to defendants that had a trial. The same Court then rendered the decision of Hill v. Lockhart, Supra., that applied the Strickland standard to plea agreements.

"The two part Strickland test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas, the first half of the test is nothing more than a restatement of the standard of attorney competence. The second, or "Prejudice" requirement on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "Prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, Supra. [HN5]

This assignment is a branch-off from the Brady violation. The State withheld all exculpatory evidence behind the guise of "Counsel Only" material, and Kazar knew this. Not only did Kazar know this suppression, she was complicit. Kazar never notified Petitioner of any evidence, never discussed a trial strategy, and most certainly never told him that a jury would not be allowed to see any evidence. Kazar sold Petitioner's conviction to the State.

In Hill, the Petitioner claimed his counsel "misinformed" him. In the present case, Counsel withheld the knowledge of "Counsel Only" material, and its ramifications if there was to be a trial. This is deficient performance. No counsel can be "effective" when it contrives to hide crucial information that a defendant must have in order to make his or her decision on how best to judge his circumstances.

The "Prejudice" requirement under Hill requires Petitioner to establish a

"reasonable probability" that absent counsel's error, he would have insisted on going to trial.

Nobody in their right mind would accept a plea agreement if his counsel said the following:

"You've been indicted for aggravated murder but I've spoken to the prosecutor, he has no body, no weapon, and no witnesses, what would you like to do?"

To plead to that scenario is simply ludicrous, unless counsel leads you to believe otherwise; especially if counsel did not provide you with discovery or any other documentation.

Would the Petitioner have pled guilty had Kazar said the following:

"The State has evidence against you, but they designated it "Counsel Only" and because of that, they have no case."

Once again, it would be ludicrous to plead to a statement like that. Had Kazar notified Petitioner of the State's suppression, he would never had pled guilty!

CONCLUSION

With the State's suppression of evidence that could not incriminate Petitioner, Brady v. Maryland was violated. With Kazar's collusion in this suppression, and giving ineffective advice to Petitioner, Hill v. Lockhart was violated. Lastly, with Kazar's deficient performance in failing to file a motion to discharge, Strickland v. Washington was violated.

With the violations listed herein, Petitioner's plea agreement must be vacated.

Respectfully submitted,



Shean M. Elkins

678757

Chillicothe Correctional Inst

P.O. Box 5500

Chillicothe, Oh 45601-0990

IN THE COURT OF APPEALS
TENTH DISTRICT
FRANKLIN COUNTY, OHIO

STATE OF OHIO

VS.

Shean M. Elkins

CPC Case No. 12CR3378

AFFIDAVIT OF SHEAN M. ELKINS

I, Shean M. Elkins, being first duly cautioned and sworn, state that I have personal knowledge of the facts contained in this Affidavit and that I am competent to testify to the matter stated herein, and state the following:

As Petitioner's Trial Counsel, the only items of discovery that Michelle Kazar provided me are as follows:

<u>Document</u>	<u>Pages</u>
Indictment	10
Interview Summary #1	1
Interview Summary #2	1
CPD photo and info	1
CPD multi-photo	2
Attorney General "Personal Detail"	2
Attorney General "Record Info"	2
CPD Criminal Investigation Summary #1	5
CPD Criminal Investigation Summary #2	3
CPD "Preliminary Investigation"	4
CPD Summary Haynes	2
Miranda	1
CPD Address info	2
Extradition waiver	1
Florida Sheriff report	2
Florida complaint	1
Ohio Complaint #1	1
Ohio Complaint #2	1
Arraignment	1
Booking sheet	1
BSO Pics (Photo)	2
Prisoner receipt	2
Medication receipt	1
Deanna Moore email	2
Blendon Township notes	4
Blendon Township fax sheets	1
Juvenile bureau summary	1

Multiple copies of each were provided. Never have I received any information that was in possession of the State.

AFIDAVIT OF SHEAN M. ELKINS (Continued)



Shean M. Elkins
678757
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Oh 45601-0990

Sworn to before me and subscribed in my presence on this 8th day of April,
2019.



Notary Public



My Commision Expires

COLUMBUS DIVISION OF POLICE
INVESTIGATIVE SUBDIVISION
CRIMINAL INVESTIGATION SUMMARY

DATE: March 30, 2012
CASE FILE NO. 143-12

DEFENDANT SHEAN M. ELKINS	SEX Male	RACE White	DOB 01/08/1969	ID [REDACTED]
ADDRESS 200 S.W. 8 th Street, #5, Pompano Beach, Florida		ZIP 33060	SSN [REDACTED]	
E-MAIL ADDRESS				
CHARGE(S) Rape—Child Under 13, 2907.02(A-1B), F-1; Sexual Battery, 2907.03(A-5) F-3			O.R. 12208450CPD	
OFFENSE LOCATION 2595 Northwold Road, Columbus, Ohio 43215			DATE & TIME OF ARREST 05/04/2012 5:40 p.m.	
EVIDENCE SEIZED			PROPERTY NUMBER	
RECORDED? Yes	TYPE OF RECORDING: DVD		PROPERTY #:	

DEFENDANT	SEX	RACE	DOB	ID
ADDRESS		ZIP	SSN	
E-MAIL ADDRESS				
CHARGE(S)			O.R.	
OFFENSE LOCATION			DATE & TIME OF ARREST	
EVIDENCE SEIZED			PROPERTY NUMBER	
RECORDED?	TYPE OF RECORDING:		PROPERTY #:	

DEFENDANT	SEX	RACE	DOB	ID
ADDRESS		ZIP	SSN	
E-MAIL ADDRESS				
CHARGE(S)			O.R.	
OFFENSE LOCATION			DATE & TIME OF ARREST	
EVIDENCE SEIZED			PROPERTY NUMBER	
RECORDED?	TYPE OF RECORDING:		PROPERTY #:	

WITNESSES: (POLICE)

NAME Det. R. Haynes	RANK P.O.	BADGE/IBM #2146	
ASSIGNMENT 933D Sexual Assault Unit-D	DAYS OFF S/M	WATCH 2 nd	O.R. 12208450CPD
E-MAIL ADDRESS [REDACTED]			
Telephone: [REDACTED] Fax [REDACTED]			
EXPECTED TESTIMONY Primary Investigator.			

NAME Det. Zane Kirby	RANK P.O.	BADGE/IBM #274	
ASSIGNMENT Exploited Children Unit	DAYS OFF W/T	WATCH 2 nd	O.R. 12208450CPD
E-MAIL ADDRESS [REDACTED]			
Telephone: [REDACTED] Fax 6 [REDACTED]			
EXPECTED TESTIMONY Downloaded text messages on Yvette Elkins' cell phone.			

NAME Det. Jason Sprague	RANK P.O.	BADGE/IBM #1891	
ASSIGNMENT 935D Sexual Assault Unit-D/E	DAYS OFF S/M	WATCH EMW	O.R. 12208450CPD
E-MAIL ADDRESS [REDACTED]			
Telephone: [REDACTED] Fax [REDACTED]			
EXPECTED TESTIMONY Assisted in the controlled phone call.			

NAME	RANK	BADGE/IBM	
ASSIGNMENT	DAYS OFF	WATCH	O.R.
E-MAIL ADDRESS			
EXPECTED TESTIMONY			

NAME	RANK	BADGE/IBM	
ASSIGNMENT	DAYS OFF	WATCH	O.R.
E-MAIL ADDRESS			
EXPECTED TESTIMONY			

If the victim or witness identified the defendant, state: How (at scene, line-up, photo, etc.); When (date, time, etc.); Where (arrest scene, home, etc.)

Witnesses: (Civilian)

NAME Cynthia M. Elkins		PHONE (HOME) [REDACTED]	PHONE (WORK)
ADDRESS [REDACTED]		SEX Female	AGE 20
E-MAIL ADDRESS			
PLACE OF EMPLOYMENT		RELATIONSHIP TO DEFENDANT Biological daughter	
EXPECTED TESTIMONY Victim of crime.			
COMMENTS	TAPE Yes	TYPE OF TAPE Audio CD	PROPERTY NUMBER

NAME Yvette M. Elkins		PHONE (HOME) [REDACTED]	PHONE (WORK)
ADDRESS [REDACTED]		SEX Female	AGE 49
E-MAIL ADDRESS			
PLACE OF EMPLOYMENT COTA		RELATIONSHIP TO DEFENDANT Ex-wife	
EXPECTED TESTIMONY Biological mother of victim. Had text conversations with the suspect about sexually assaulting the victim.			
COMMENTS	TAPE Yes	TYPE OF TAPE Audio CD	PROPERTY NUMBER

NAME		PHONE (HOME)	PHONE (WORK)
ADDRESS		SEX	AGE
E-MAIL ADDRESS			
PLACE OF EMPLOYMENT		RELATIONSHIP TO DEFENDANT	
EXPECTED TESTIMONY			
COMMENTS	TAPE	TYPE OF TAPE	PROPERTY NUMBER

Franklin County Municipal Court

Lori M. Tyack, Clerk of Court 375 S. HIGH ST., COLUMBUS, OHIO 43215

State of Ohio
County of Franklin
City of Columbus

V:

SHEAN MAURICE ELKINS

DEFENDANT

OTHER JURISDICTION

FILED
2012 MAY -2 PM 11:12

TIME STAMP

COUNTY

COURT

CLERK

COMPLAINT

Complainant, being duly sworn, states that the above named defendant, at Franklin County / Columbus, Ohio, on or about the 25 day of September, 2012 did: engage in sexual conduct, to wit: vaginal intercourse with another under the age of thirteen years, whether or not the offender knows the age of the other person and not the spouse of the offender, to wit: Cynthia M. Elkins age 10.

in violation of section 2907.02(A-1b) ☐ City Code ☐ Misdemeanor
☒ O.R.C. , a ☒ Felony of the First degree.

Complainant

SIGNATURE

Ron Haynes

PRINT FULL NAME

2146

BADGE NUMBER

CPD, SAU-D, 120 Marconi Blvd.

ADDRESS OR AGENCY & ASSIGNMENT

Columbus

CITY

Ohio

STATE

43215

ZIP CODE

Sworn to and subscribed before me, this

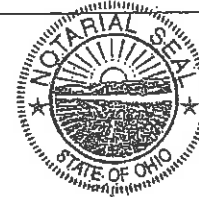
2 day of May, 2012

Lori M. Tyack

Clerk of the Franklin County Municipal Court

By

CLERK / DEPUTY CLERK / NOTARY PUBLIC / PEACE OFFICER



JEFFREY W. SKINNER
Notary Public
In and for the State of Ohio
My Commission Expires
8-21-12

Notary Seal & Expiration Date

☒ ARREST WARRANT

To any law enforcement officer of the State of Ohio:

You are hereby commanded to arrest the above named defendant and bring him/her before the Franklin County Municipal Court without unnecessary delay, to answer to the complaint hereon. WHEN APPLICABLE, IN ACCORDANCE TO CRIMINAL RULE #4, THE WARRANT HAS BEEN ISSUED BEFORE THE DEFENDANT HAS APPEARED AND THE BAIL PROVISION CRIMINAL RULE 46 SHALL APPLY. ARRAIGNMENT COURT IS HELD IN COURTROOM 4C AT 9:00 AM., MONDAY THROUGH FRIDAY.

Lori M. Tyack
Clerk of the Franklin County Municipal Court

State #

By

DEPUTY

Control #

DATE

Complaint Number

7035295

Issuing Officer

Ron Haynes

Badge Number

2146

☐ SUMMONS☒ WARRANT☐ MISDEMEANOR CITATION

Case No.

12-10914-1

Charge: Rape - Child Under Thirteen Years - F-1

Section Number 2907.02(A-1b)

☐ City Code☒ O.R.C.

Offense Date

9-25-2001

Offense Time

8:00 PM

Offense Location 2595 Northwold Road

Suspect Cruiser Dist.

184

Name Elkins

Shean

Maurice

LAST

FIRST

MIDDLE

Street 2435 Scott Street

City Hollywood

State Fl

Zip

33020

SEX M RACE W HGT 5'10"

WGT 170

HAIR Brown

EYES Blue

DOB 1/8/1969

S.S.#

DL/ID#

☐ SUMMONS: Read Notice #1 on reverse side.

You MUST appear in courtroom 4C ☐ or 15C ☐ on the date and time indicated. I personally served the Defendant a copy of this Summons on _____ Signature _____

Type of SUMMONS Service Requested:

☐ Personal☐ Certified Mail☐ CITATION: Read Notice #2 on reverse side.

Court appearance is OPTIONAL. You may contest this citation by appearing in COURTROOM 4C ☐ COURTROOM 15C ☐ on the day and time indicated.

COURT DATE & TIME

MONTH DAY YEAR TIME PM

X

This is not an admission of guilt. An ARREST WARRANT will be issued if you do not properly respond to this charge.

8/01

ORIGINAL/COURT COPY

A012

Franklin County Municipal Court

Lori M. Tyack, Clerk of Court 375 S. HIGH ST., COLUMBUS, OHIO 43215

State of Ohio
County of Franklin
City of Columbus

V:

SHEAN MAURICE ELKINS

DEFENDANT

OTHER JURISDICTION

2012 MAY -2 PM 11:11

TIME STAMP

COUNTY

COURT

COMPLAINT

Complainant, being duly sworn, states that the above named defendant, at Franklin County / Columbus, Ohio, on or about the 29 day of March, 2004, did: engage in sexual conduct, to wit: vaginal intercourse with another, not the spouse of the offender to wit: Cynthia M. Elkins, and Shean M. Elkins being the natural parent of said victim.

in violation of section 2907.03(A-5) ☐ City Code ☐ Misdemeanor ☒ O.R.C. , a ☒ Felony of the Third degree.

Complainant R. Haynes #2146

Ron Haynes

2146

SIGNATURE

PRINT FULL NAME

BADGE NUMBER

CPD, SAU-D, 120 Marconi Blvd

Columbus

Ohio

43215

ADDRESS OR AGENCY & ASSIGNMENT

CITY

STATE

ZIP CODE

Sworn to and subscribed before me, this

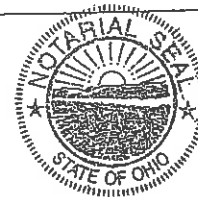
2 day of May, 2012

Lori M. Tyack

Clerk of the Franklin County Municipal Court

By

CLERK / DEPUTY CLERK / NOTARY PUBLIC / PEACE OFFICER



JEFFREY W. SKINNER
Notary Public
In and for the State of Ohio
My Commission Expires
8-21-12

Notary Seal & Expiration Date

Lori M. Tyack

Clerk of the Franklin County Municipal Court

State # Control #

By

DEPUTY

DATE

☒ ARREST WARRANT

To any law enforcement officer of the State of Ohio:

You are hereby commanded to arrest the above named defendant and bring him/her before the Franklin County Municipal Court without unnecessary delay, to answer to the complaint herein. WHEN APPLICABLE, IN ACCORDANCE TO CRIMINAL RULE #4, THE WARRANT HAS BEEN ISSUED BEFORE THE DEFENDANT HAS APPEARED AND THE BAIL PROVISION CRIMINAL RULE 46 SHALL APPLY. ARRAIGNMENT COURT IS HELD IN COURTROOM 4C AT 9:00 AM., MONDAY THROUGH FRIDAY.

State #

Control #

By

DEPUTY

DATE

Complaint Number

7035296

Issuing Officer

Ron Haynes

Badge Number

2146

☒ WARRANT ☐ SUMMONS☐ MISDEMEANOR CITATION

Case No. 12-10914-2

Charge: Sexual Battery

Section Number 2907.03(A-5)

☐ City Code ☒ O.R.C.

Offense Date

3-29-2004

Offense Time

8:00 PM

Offense Location 2595 Northwold Rd

Suspect Cruiser Dist.

184

Name Elkins

Shean

Maurice

LAST

FIRST

MIDDLE

Street 2435 Scott Street

City Hollywood

State Fl

Zip

33020

SEX M RACE W

HGT

5'10"

WGT

170

HAIR

Brown

EYES

Blue

DOB 1/8/1969

S.S.#

DL / I.D.#

CPD ID

☐ SUMMONS: Read Notice #1 on reverse side.

You MUST appear in courtroom 4C ☐ or 15C ☐ on the date and time indicated. I personally served the Defendant a copy of this Summons on _____ Signature _____

Type of SUMMONS Service Requested:

☐ Personal☐ Certified Mail☐ CITATION: Read Notice #2 on reverse side.

Court appearance is OPTIONAL. You may contest this citation by appearing in COURTROOM 4C ☐ COURTROOM 15C ☐ on the date and time indicated.

COURT DATE & TIME

MONTH DAY YEAR TIME PM

X

This is not an admission of guilt. An ARREST WARRANT will be issued if you do not properly respond to this charge.

8/01

ORIGINAL/COURT COPY

12-0014644 6-02-2012 8:45

Status: A Fac: MO Detain: N
Auth: Visited: Property

ELKINS, SHEAN M

Alias(s): ELKINS, SHEAN M
#435 SCOTT
33020Sex: M
Race: W
SSN: [REDACTED]
FBI-Id:
Empl: UNKNOWNHeight: 5'11"
Weight: 240
DOB: 1-08-1969 OH
MNU-Id: 41966BHair: BRO
Eyes: BLU
Relig: CHRIST
BCI-Id:
Pers Contact:Loc: MJ-6 -ER-001
Bin: 00629Ill: N
Cash Recd:Med: Y
Bond Type: Asgn: FEL
Bond:

Disp:

Accident: N Lic No:
Arrest Location: NOT ON U10
Date/Time: 6-02-2012 5:55
Officer: 2146 CPD Haynes, Ron

Convey Officer: 1655 CPD Coulter, Paul

Slatting Officer: Fleming, April F.

Warrant: Y On-View: N

Release Officer: -FCSO
Tentative D/T: To:

Code No. Charge Description

1 2907.02 RAPE
Sent-Date:
Dispo: /
Chg Rel D/T:

Leng:

Meas:

Case Numb 10914 1

Fine:

F1

Int. Ori: CPD

2 2907.03 SEXUAL BATTERY
Sent-Date:
Dispo: /
Chg Rel D/T:

Leng:

Meas:

Case Numb 10914 2

Fine:

F3

Int. Ori: CPD

Case No.

Court Date Time Judge
1 M 6-04-2012 9:00 ARRAIGNMENT MUNICIPAL

10914

Remarks: 06022012..In booking @ 0826hrs..placed in s/t #7...due to request for
.....PC..copy of witness statement and slate to Sgt's office for
.....review...report generated.....af970

P08040: PRINTED 6/02/12 8:50:03

Court Arraignment Sheet

Columbus Division of Police

Check Block Applicable

Date: 06-02-12

- ☐ Direct Indictment:
☐ Preliminary Hearing:
☐ Diversion

Note: List all CPD Officers subpoenaed at bottom of page.

Defendant Name Shean M. ElkinsCharge Rape Under 13 years of age 2907.02(A-1B) F-1,

Sexual Battery (2907.03(A-5) F-3

Court Date 6-4-2012 Municipal Court Case No. 12-10914 CPD Case Folder No. 143-12

(Note: If a high bond is warranted justify at end of summary)

Bond Set \$50,000 C/SBy Judge HALEPreliminary Hearing Date 6-12-2012 Court Room 4D Time 10:00 a.m.Location Offense Occurred 2595 Northwood Rd. CITY OF COLS Date of Offense 9-25-2001, 3-29-2004Time of Offense 8:00p.m Victim Cynthia M. Elkins CE Age 10yoa, 13yoaReporting Person Cynthia M. Elkins Relationship to Victim SelfDate of Arrest 6-02-12 Time of Arrest 5:55a.m Co-Defendants 1. _____

2. _____ 3. _____ 4. _____

Summary Of Incident: State the who, what, where, how, and, if known, the why of the case:

"Use reverse side if more space is needed"

Between September 11, 2001 and 2008, Mr. Elkins did begin french kissing his ten year old biological daughter Ms. Cynthia Elkins. Mr. Elkins later entered Ms. Cynthia Elkins bedroom while she was in bed and pulled her shorts and panties to the side and performing cunnilingus on Ms. Cynthia Elkins while masterbating and ejaculating on the floor. Mr. Elkins eventually began performing vaginal intercourse with Ms. Cynthia Elkins. Mr. Elkins did this 3 to 5 times a week over the seven year period.

Complaint filed by:Police Officer - Name Det. R. Haynes #2146

Private Citizen - Name _____

Investigating Officer Det. R. Haynes Badge 2146 Assignment 933D, SASProcessing Officer Det. R. Haynes Badge 2146 Assignment 933D, SAS

If Preliminary Hearing, List all C.P.D. Officers Subpoenaed Here: _____

Supervisor's Approval _____

Date _____

I-20.112 (4/95)

Preliminary Hearing - Attach Subpoena Here.

BLENDON TOWNSHIP POLICE DEPARTMENT
 6340 Hempstead Road, Westerville Ohio 43081
 Telephone # (614) 882-8500

12-02-012

CRIME SCENE NOTES

Offense: Rape	Location: 2595 Northwold/3900 Bluebird Ct	Date 2001-2008
		Page 1
<p>February 25, 2012: Yvette Elkins came to the Blendon Township Police Department to report the sexual abuse of her two daughters. Both daughters are now adults, ages 21 and 18. Ms. Elkins spoke with Officer Nance who provided Ms. Elkins with blank witness statements to take home with her to have her daughters complete. Ms. Elkins came alone to BTPD.</p> <p>February 27, 2012: Ms. Elkins again came to BTPD. She had with her completed witness statements that appeared to have been completed by both her daughters. One statement was handwritten and signed Shelby Elkins, one was type written (cut & paste) and signed Cynthia Elkins. A third statement was completed in the name of Yvette Elkins. Again, the two daughters were not present. Det. Phillips asked that Ms. Elkins have her daughters set up an interview with Det. Phillips to review the details of the sexual abuse. Ms. Elkins went ahead and scheduled this interview for Wednesday 02/29/12 at 0830hours. Det. Phillips reviewed the statements and concluded the sexual abuse occurred outside of Blendon Township.</p> <p>February 29, 2012 0900 hours, Det. Phillips called Ms. Elkins after her daughters failed to show or call to reschedule the interview. Ms. Elkins apologized and explained she spoke with her daughters and decided Friday March 2, 2012 would work better. Det. Phillips explained that after reviewing the statements it appeared as though the sexual abuse occurred outside Blendon Township and would be better suited if investigated through Columbus Police. Ms. Elkins agreed and was explained the report and witness statements would be forwarded appropriately.</p>		
END OF SUMMARY		

Juvenile Bureau Child Abuse

Investigative Summary

To: Sergeant Wilson
From: Detective Tucker #2056
Subject: Folder #2004-0833

Summary of Findings

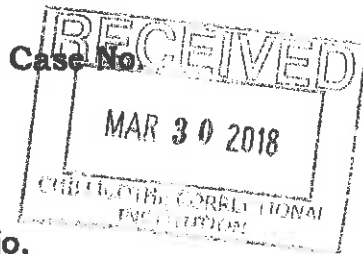
Per FCCS CW Martha Lambert, the referral is unsubstantiated. ACV stated that last summer of 2003 AP (Dad) was sitting in a chair half drunk with a beer in his hand and asked ACV and her sister Shelby for a kiss. ACV stated that they both told him no. ACV stated that AP never asked again; she stated that she had come to the conclusion that AP was kidding. ACV stated that AP never touched her inappropriately. AP Shawn Elkins stated that he does not remember the incident.

Based on the above statement the referral will be closed at office level.

Case Disposition

Unfounded	<u>Office X</u>	Referred	Charges
Referred to	_____		
Charges filed	_____		
Supervisor Approval	_____		

58032 - K16



12CR 07 3378

State of Ohio,
Franklin County, ss:

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2012 JUL -6 PM 1:52
CLERK OF COURTS

INDICTMENT FOR: Rape (2907.02 R.C.) (F-1) (13 Counts); Sexual Battery (2907.03 R.C.) (F-2) (4 Counts); Sexual Battery (2907.03 R.C.) (F-3) (4 Counts); Gross Sexual Imposition (2907.05 R.C.) (F-3) (1 Count) and Gross Sexual Imposition (2907.05 R.C.) (F-4) (1 Count); (Total: 23 Counts)

In the Court of Common Pleas, Franklin County, Ohio, of the Grand Jury term beginning May eleventh the year of our Lord, Two Thousand Twelve.

Count-1

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about September 11, 2001 to March 28, 2002, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: cunnilingus, with Cynthia Elkins, not his spouse, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: ten (10) years of age, and the said Shean Elkins having purposely compelled Cynthia Elkins to submit by force or threat of force,

Count 2

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about September 11, 2001 to March 28, 2002, within the County of Franklin

58032 - K17

aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: ten (10) years of age, and the said Shean Elkins having purposely compelled Cynthia Elkins to submit by force or threat of force,

Count 3

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2002 to March 28, 2003, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: eleven (11) years of age, and the said Shean Elkins having purposely compelled Cynthia Elkins to submit by force or threat of force,

Count 4

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2003 to March 28, 2004, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: twelve (12) years of age, and the said Shean Elkins having purposely compelled Cynthia Elkins to submit by force or threat of force,

Count 5

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do

58032 - K18

find and present that Shean Elkins late of said County, from on or about March 29, 2004 to March 28, 2005, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Shean Elkins having purposely compelled Cynthia Elkins to submit by force or threat of force,

Count 6

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2005 to March 28, 2006, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Shean Elkins having purposely compelled Cynthia Elkins to submit by force or threat of force,

Count 7

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2006 to March 28, 2007, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Shean Elkins having purposely compelled Cynthia Elkins to submit by force or threat of force,

Count 8

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about

58032 - K19

March 29, 2007 to March 28, 2008, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins,

Count 9

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about September 11, 2001 to March 28, 2002, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: cunnilingus, with Cynthia Elkins, not his spouse, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: ten (10) years of age,

Count 10

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about September 11, 2001 to March 28, 2002, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: ten (10) years of age,

Count 11

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2002 to March 28, 2003, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and

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the said Cynthia Elkins being less than thirteen (13) years of age, to wit: eleven (11) years of age,

Count 12

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2003 to March 28, 2004, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with Cynthia Elkins, not his spouse, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: twelve (12) years of age,

Count 13

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about September 11, 2001 to March 28, 2002, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage in sexual conduct, to wit: cunnilingus, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: ten (10) years of age,

Count 14

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about September 11, 2001 to March 28, 2002, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage

58032 - K21

in sexual conduct, to wit: vaginal intercourse, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: ten (10) years of age,

Count 15

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2002 to March 28, 2003, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: eleven (11) years of age,

Count 16

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2003 to March 28, 2004, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*, and the said Cynthia Elkins being less than thirteen (13) years of age, to wit: twelve (10) years of age,

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Count 17

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2004 to March 28, 2005, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*

Count 18

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2005 to March 28, 2006, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*

Count 19

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2006 to March 28, 2007, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or

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adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*

Count 20

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about March 29, 2007 to March 28, 2008, within the County of Franklin aforesaid, in violation of section 2907.03 of the Ohio Revised Code, did engage in sexual conduct, to wit: vaginal intercourse, with another, to wit: Cynthia Elkins, not his spouse, when the said Shean Elkins is the said Cynthia Elkins's natural or adoptive parent, stepparent, guardian, custodian or other person in *loco parentis*

Count 21

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about May 1, 2001 to June 29, 2002, within the County of Franklin aforesaid, in violation of section 2907.02 of the Ohio Revised Code, did engage in sexual conduct, to wit: cunnilingus, with Shelby Elkins, not his spouse, and the said Shelby Elkins being less than thirteen (13) years of age, to wit: seven and/or eight (7 and/or 8) years of age, and the said Shelby Elkins being less than (10) years of age, to wit: seven and/or eight (7 and/or 8) years of age,

Count 22

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about June 30, 2004 to June 29, 2005, within the County of Franklin aforesaid, in violation of section 2907.05 of the Ohio Revised Code, did have sexual contact

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with Shelby Elkins, not his spouse, the said Shelby Elkins being less than thirteen (13) years of age, to wit: eleven (11) years of age,

Count 23

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Shean Elkins late of said County, from on or about June 30, 2006 to June 29, 2007, within the County of Franklin aforesaid, in violation of section 2907.05 of the Ohio Revised Code, did have sexual contact with Shelby Elkins, not his spouse, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

RON O'BRIEN
Prosecuting Attorney
Franklin County, Ohio

A TRUE BILL


Assistant Prosecuting Attorney


Foreperson, Grand Jury

58032 - K25

The following is Information for the Clerk of Courts Only.

State of Ohio v. Shean Elkins
Address: 2435 Scott Street, Hollywood, Florida, 33020
DOB: 1-8-1969
Sex/Race: Male White
Date of Arrest: 6-2-2012
SSN: [REDACTED]
Police Agency: CPD
Municipal Reference: 10914-12
ITN #: 161986DA

Count 1:	Rape	2907.02 F-1
Count 2:	Rape	2907.02 F-1
Count 3:	Rape	2907.02 F-1
Count 4:	Rape	2907.02 F-1
Count 5:	Rape	2907.02 F-1
Count 6:	Rape	2907.02 F-1
Count 7:	Rape	2907.02 F-1
Count 8:	Rape	2907.02 F-1
Count 9:	Rape	2907.02 F-1
Count 10:	Rape	2907.02 F-1
Count 11:	Rape	2907.02 F-1
Count 12:	Rape	2907.02 F-1
Count 13:	Sexual Battery	2907.03 F-2
Count 14:	Sexual Battery	2907.03 F-2
Count 15:	Sexual Battery	2907.03 F-2
Count 16:	Sexual Battery	2907.03 F-2
Count 17:	Sexual Battery	2907.03 F-3

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- Count 18: Sexual Battery
2907.03 F-3
- Count 19: Sexual Battery
2907.03 F-3
- Count 20: Sexual Battery
2907.03 F-3
- Count 21: Rape
2907.02 F-1
- Count 22: Gross Sexual Imposition
2907.05 F-3
- Count 23: Gross Sexual Imposition
2907.05 F-4

Case No.



mk

58045 - D87

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO

-vs-

Case No. 12CR-3378

SEAN ELKINS,

Defendant.

JUDGE SCHNEIDER

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2012 JUL 16 PM 4:02
CLERK OF COURTS-CV

DEMAND FOR DISCOVERY

Now comes the Defendant, by and through undersigned counsel, and hereby respectfully demands all discovery pursuant to Rule 16 of the Ohio Rules of Criminal Procedure, including items that are material to the preparation of a defense, or are intended for use by the State as evidence at trial, or were obtained from or belong to the defendant, within the possession of, or reasonably available to the State, including but not limited to the following:

I. STATEMENT OF THE DEFENDANT AND CO-DEFENDANT

Crim. R. 16(B)(1) All relevant written or recorded statements, or copies thereof, made by the Defendant or a co-defendant, including police summaries of such statements, and including grand jury testimony by either the defendant or co-defendant.

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2. CRIMINAL RECORD(S) OF DEFENDANT, CO-DEFENDANT(S), AND WITNESS(ES) Crim. R. 16(B)(2)

A copy of Defendant's prior criminal record as well as the criminal record of any co-defendant and/or witness associated with the instant matter that would be admissible under Rule 609 of the Ohio Rules of Evidence of a witness in the State's case-in-chief, or that it reasonably anticipates calling as a witness in rebuttal or surrebuttal. For purposes of this request, a "witness" shall include any person who has or claims to have knowledge or is believed to have knowledge concerning a fact or facts about the issue(s) involved in this criminal action or proceeding or about the credibility of another witness, irrespective of whether the State intends to call such person as a witness at trial.

3. DOCUMENTS AND TANGIBLE OBJECTS Crim. R. 16(B)(3)

All laboratory or hospital reports, books, papers, tangible objects, photographs, buildings or places or copies or portions, subject only to Crim. R. 16(D)(4) and Crim. R. 16(E).

4. REPORTS OF EXAMINATIONS AND TESTS Crim. R. 16(B)(4)

Any results or reports of physical or mental examinations and of experiments or scientific tests, made in connection with the above-captioned case, subject only to Crim. R. 16(D)(4) and Crim. R. 16(E).

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5. EVIDENCE FAVORABLE TO DEFENDANT Crim. R. 16(B)(5)

All evidence or information known or which may become known to the State which may be favorable to the Defendant and material to guilt or punishment, including information or evidence which could be used to obtain evidence that would diminish the credibility of any State's witness, as well as material relevant to either guilt or punishment. "[E]vidence that would diminish the credibility of any State's witness" includes, without limitation, plea bargains, pardons, grants of clemency, grants of immunity, informal or formal promise to speak on behalf of another in a legal proceeding, whether such accommodations have been extended on behalf of the witness or on behalf of a family member, friend or associate of the witness.

6. POLICE REPORTS Crim. R. 16(B)(6)

All reports and summaries from peace officers, the Ohio State Highway Patrol, and federal law enforcement agents, both original and supplemental, the existence of which may be known or may become known to the State and that are associated with the above-captioned matter.

7. WITNESS STATEMENTS Crim. R. 16(B)(7)

All written or recorded statements, or copies thereof, made by a witness in the State's case-in-chief, or that it reasonably anticipates calling

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as a witness in rebuttal or surrebuttal. For purposes of this request, a “witness” shall include any person who has or claims to have knowledge or is believed to have knowledge concerning a fact or facts about the issue(s) involved in this criminal action or proceeding or about the credibility of another witness, irrespective of whether the State intends to call such person as a witness at trial.

8. WITNESS NAMES AND ADDRESSES Crim. R. 16(I)

A written list of the names and addresses of all witnesses that the State intends to call in its case-in-chief, or reasonably anticipates calling in rebuttal or surrebuttal.

9. EXPERT WITNESSES: REPORTS Crim. R. 16(K)

All written reports summarizing an expert witness’ testimony, findings, analysis, conclusions, or opinions, which shall include a summary of the expert’s qualifications.

Respectfully, this demand is continuing in nature. If, subsequent to compliance with this request, the State discovers additional responsive materials, those materials shall promptly be transmitted to the Defendant. In the event the State refuses to transmit such materials, the State shall advise the Defendant of its noncompliance to allow for a determination of the

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discoverability of the withheld materials, pursuant to Crim. R. 16(C) and/or
Crim. R. 16(D)(1)-(5) and/or Crim. R. 16(E)(1) and (2).

Respectfully submitted,

Yeura Venters
Franklin County Public Defender

BY

 AC

MICHELLE KAZAR 0071211

Counsel for Defendant

373 S. High Street, 12th Floor

Columbus, OH 43215

Phone: 462-3194

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Demand for Discovery
was delivered to the Office of the Franklin County Prosecutor, 373 S. High
Street, 14th Floor, Columbus, OH 43215, this 16 day of
July, 2012.

 AC
Counsel for Defendant

58047 - D98

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION**

State of Ohio

Plaintiff,

vs.

Sean Elkins

Defendant

Case No. 12CR3378

Judge Hogan

**FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2012 JUL 19 PM 2:34
CLERK OF COURTS**

IDENTIFICATION OF DISCOVERY PROVIDED

Pursuant to Criminal Rule 16(B), discovery includes:

Recorded Statement of Defendant
Criminal Records of Witnesses in State's
case-in-chief may be provided at a later
date
Papers

Documents
Reports from Peace Officers
Written or Recorded Statements by
Witnesses in the State's Case in Chief

Pursuant to Criminal Rule 16(I), a list of witnesses is attached hereto.

Pursuant to Criminal Rule 16(K), a written report by expert witness(es) shall be provided.

Pursuant to Evidence Rule 609(B), the State hereby gives advance notice of its intent to seek admission under that rule of any conviction of a witness that is more than 10 years old as calculated therein.

"Counsel Only" Material has been designated on this case. The State retains a copy of this material for its file.

Redacted information that is neither certified to the Court nor designated "Counsel Only" is not material to the preparation of a defense. Contact the Prosecutor if you dispute that issue.

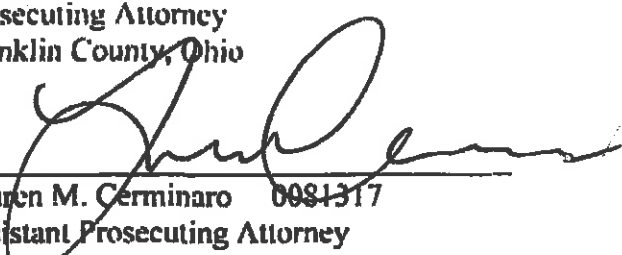
NOTICE OF INTENTION TO USE EVIDENCE

The prosecution, in accordance with Rule 12, Ohio Rules of Criminal Procedure, hereby informs defendant of the general intention to use all discoverable evidence pertaining to this case as set forth by Rule 16, Ohio Rules of Criminal Procedure. The prosecution will permit discovery of this evidence in accordance with Rule 16, Ohio Rules of Criminal Procedure.

58047 - D99

Respectfully submitted,

Ron O'Brien
Prosecuting Attorney
Franklin County, Ohio



Lauren M. Cerminaro 0081317
Assistant Prosecuting Attorney
373 South High Street
Columbus, Ohio 43215
(614) 525-3555

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed by U.S. mail, postage prepaid, to Michelle L. Kazar, at Franklin County Public Defender, 373 South High Street, Columbus, Ohio 43215-4591 on the 19th day of July, 2012.



Lauren M. Cerminaro 0081317
Assistant Prosecuting Attorney

58075 - T75

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

State of Ohio

Plaintiff,

vs.

Sean Elkins

Defendant

Case No. 12CR3378✓
and 12CR2898

Judge Hogan

STATE'S SUPPLEMENTAL DISCOVERY


Pursuant to Rule 16, Ohio Rules of Criminal Procedure, the Prosecuting Attorney provides the following additional information regarding the above styled case.

(1) CD Copy of Controlled Call

(2) CD Copy of Text Messages

Respectfully submitted,

RON O'BRIEN
Prosecuting Attorney
Franklin County, Ohio


Lauren M. Cerminaro 0081317
Assistant Prosecuting Attorney
373 South High Street, 14th floor
Columbus, Ohio 43215
(614) 525-3555

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2012 SEP -5 PM 2:45
CLERK OF COURTS

58075 - T76

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing notice was served upon Michelle L Kazar, at Franklin County Public Defender, 373 South High Street, Columbus, Ohio 43215-4591, Counsel for Defendant, by regular U.S. Mail, postage prepaid on the 5 day of September, 2012



Lauren M Cerminaro 0081317
Assistant Prosecuting Attorney

58080 - P25

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION**

State of Ohio

Plaintiff,

vs.

Sean Elkins

Defendant

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Case No. 12CR3378 ✓
and 12CR2898

Judge Hogan

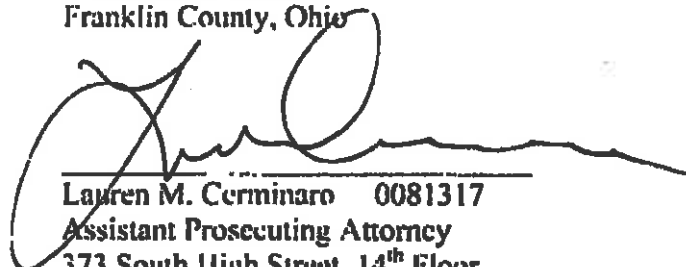
STATE'S SUPPLEMENTAL DISCOVERY

Pursuant to Rule 16, Ohio Rules of Criminal Procedure, the Prosecuting Attorney provides the following additional information regarding the above styled case.

(1) DVD Copy of Interview of Defendant

Respectfully submitted,

RON O'BRIEN
Prosecuting Attorney
Franklin County, Ohio



Lauren M. Cerminaro 0081317
Assistant Prosecuting Attorney
373 South High Street, 14th Floor
Columbus, Ohio 43215
(614) 525-3555

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2012 SEP 11 PM 2:31
CLERK OF COURTS

12-20

2

R

58080 - P26

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing notice was served upon Michelle L. Kazar, at Franklin County Public Defender, 373 South High Street, Columbus, Ohio 43215-4591, Counsel for Defendant, by regular U.S. Mail, postage prepaid on the 11 day of September, 2012.



Lauren M. Cerminaro 0081317
Assistant Prosecuting Attorney

58084 - K20 IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,

FILED
COMMON PLEAS COURT

PLAINTIFF,

2012 SEP 25 AM 11:33

v.

CLERK OF COURT CASE NO. 12 CR 3378

Shean Elkins

JUDGE SCHNEIDER

DEFENDANT.

ENTRY

Upon Motion of the parties and for good cause
shown, to wit: further investigation & negotiation

this
case, being set for trial on the 25th day of September, 2012 at 9:00 a.m., is hereby
continued for reassignment to the 27 day of November, 2012 at 9:00
a.m.

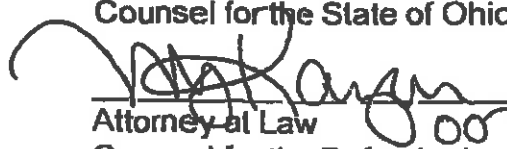
Defendant waives the right to a speedy trial for the period of this continuance as to the
pending charge or charges as well as any subsequent, additional charge or charges which
may arise from the same set of facts and circumstances as the initial charge.


Judge Schneider

Approved:

Ron O'Brien
Prosecuting Attorney
Franklin County, Ohio


Assistant Prosecuting Attorney
Counsel for the State of Ohio


Attorney at Law
Counsel for the Defendant


Defendant

ASSIGNMENT COMMISSIONER
COURT OF COMMON PLEAS
2012 SEP 25 AM 11:09

58122 - S47 IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

STATE OF OHIO,

PLAINTIFF,

v.

Shean Elkins

DEFENDANT.

CRIMINAL DIVISION
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO

2012 DEC -4: AM 11:15

CLERK OF COURTS

CASE NO 12 CR 3378

JUDGE SCHNEIDER

ENTRY

Upon Motion of the parties and for good cause
shown, to wit: further investigation + discussion

this
case, being set for trial on the ~~20~~²⁷ day of November 2012 at 9:00 a.m., is hereby
continued for reassignment to the 29 day of January, 20 13 at 9:00
a.m.

Defendant waives the right to a speedy trial for the period of this continuance as to the
pending charge or charges as well as any subsequent, additional charge or charges which
may arise from the same set of facts and circumstances as the initial charge.


Judge Schneider

Approved:

Ron O'Brien
Prosecuting Attorney
Franklin County, Ohio


Assistant Prosecuting Attorney
Counsel for the State of Ohio


Attorney at Law
Counsel for the Defendant

X
Defendant

2012 DEC -4 AM 11:05
ASSIGNMENT COMMISSIONER
COURT OF COMMON PLEAS

120341242

SW

58152 - S19 IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,

FILED.
COMMON PLEAS COURT

PLAINTIFF, 2013 JAN 31 PM 12:06

v.

CLERK OF COURTS

CASE NO. 12 CR 3378

Shean Elkins

JUDGE SCHNEIDER

DEFENDANT.

ENTRY

Upon Motion of the parties and for good cause
shown, to wit: further investigation & negotiation
this

case, being set for trial on the 29th day of January 2013 at 9:00 a.m., is hereby
continued for reassignment to the 20 day of March, 2013 at 9:00
a.m.

Defendant waives the right to a speedy trial for the period of this continuance as to the
pending charge or charges as well as any subsequent, additional charge or charges which
may arise from the same set of facts and circumstances as the initial charge.


Judge Schneider

Approved:

Ron O'Brien
Prosecuting Attorney
Franklin County, Ohio


Assistant Prosecuting Attorney
Counsel for the State of Ohio


Attorney at Law
Counsel for the Defendant

Shean Elkins
Defendant

ND:
4/9-7/14

Do + 31-11

8

58189 - M52

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,

Termination No. 13 By CJ

Plaintiff,

v.

Case No. 12CR-3378

SHEAN ELKINS,

Judge SCHNEIDER

Defendant.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2013 MAR 22 PM 12:16
CLERK OF COURTS

JUDGMENT ENTRY
(Prison Imposed – Sexual Predator)

On March 20, 2013, the State of Ohio was represented by Assistant Prosecuting Attorney Lauren Cerminaro, and the Defendant was represented by Attorney Michelle Kazar. The Defendant, after being advised of his rights pursuant to Crim. R. 11, entered a plea of guilty to the stipulated lesser included offense of **Count One** of the Indictment, to wit: **RAPE**, in violation of Section 2907.02 (A)(2) of the Ohio Revised Code, being a Felony of the First Degree; guilty to the stipulated lesser included offense of **Count Two** of the Indictment, to wit: **RAPE**, in violation of Section 2907.02 (A)(2) of the Ohio Revised Code, being a Felony of the First Degree; guilty to the stipulated lesser included offense of **Count Three** of the Indictment, to wit: **RAPE**, in violation of Section 2907.02 (A)(2) of the Ohio Revised Code, being a Felony of the First Degree; and guilty to the stipulated lesser included offense of **Count Twenty-One** of the Indictment, to wit: **RAPE**, in violation of Section 2907.02 (A)(2) of the Ohio Revised Code, being a Felony of the First Degree. Upon application of the Assistant Prosecuting Attorney, and for good cause shown, it is hereby **ORDERED** that a nolle prosequi be entered for **COUNTS FOUR, FIVE, SIX, SEVEN, EIGHT, NINE, TEN, ELEVEN, TWELVE, THIRTEEN, FOURTEEN, FIFTEEN, SIXTEEN, SEVENTEEN, EIGHTEEN, NINETEEN, TWENTY, TWENTY-TWO and TWENTY-THREE** of the Indictment.

The Court found the Defendant guilty of the charges to which the plea was entered and proceeded to sentencing.

On March 20, 2013, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Prosecuting Attorney Lauren Cerminaro, and the Defendant was represented by Attorney Michelle Kazar. The Assistant Prosecuting Attorney and the Defendant's attorney did jointly recommend a sentence of ten (10) years as to Count One; seven (7) years as to Count Two; five (5) years as to Count Three; and nine (9) years as to Count Twenty-One. Counts One, Two and Three to be served consecutively to each other but concurrently with Count Twenty-One for a total of Twenty-Two years.

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"The Court conducted a hearing as required by O.R.C. Section 2950.09. The Court finds that there is clear and convincing evidence that the Defendant is a **SEXUAL PREDATOR**. This finding is made pursuant to O.R.C. Section 2950.09 (B) and after consideration of the factors set forth in O.R.C. Section 2950.09 (B)(2).

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording him an opportunity to make a statement on his own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is **mandatory** as to **Counts One, Two, Three and Twenty-One** pursuant to R.C. 2929.13(F).

The Court hereby imposes the following sentence: **TEN (10) YEARS** as to **Count One**; **SEVEN (7) YEARS** as to **Count Two**; **FIVE (5) YEARS** as to **Count Three**; and **NINE (9) YEARS** as to **Count Twenty-One**. **Counts One, Two and Three to be served consecutively to each other but concurrently with Count Twenty-One for a total of TWENTY-TWO (22) YEARS** to be served at the Ohio Department of Rehabilitation and Correction.

After imposing sentence, the Court stated its reasons as required by R.C. 2929.19. The Court notified the Defendant that he/she may be eligible to earn credit while in prison but that the credit is not automatic and may not be applicable for the offense for which the defendant was sentenced.

The Court notified the Defendant pursuant to R.C. 2929.19(B)(3) that the applicable period of post-release control is five (5) years mandatory.

The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R.C. 2929.18, hereby render judgment for the following fine and/or financial sanctions: Defendant shall pay court costs in an amount to be determined. No fine imposed.

The total fine and financial sanction judgment is **\$0 plus costs**.

The Defendant was notified of the Ohio Department of Rehabilitation and Correction's Shock Incarceration Programs and Post Release Control in writing and orally.

The Court makes no recommendation of the Offender's placement in an intensive prison program or transitional control.

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The Court finds that the Defendant has **three hundred twenty (320) days** of jail credit and hereby certifies the time to the Ohio Department of Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.



CHARLES A. SCHNEIDER, JUDGE

cc: Assistant Prosecuting Attorney
Defendant's Attorney